

Montana Water Court
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FILED
05/12/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-1045-R-2021
Stern, Anika
28.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: 44 Big Sky Farms, LLC

OBJECTORS: USA (Dept of Interior Bureau of Reclamation)

NOTICES OF INTENT TO APPEAR: Marilyn W. Grosfield

CASE 43B-1045-R-2021

43B 17157-00

43B 17158-00

43B 17159-00

43B 19920-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. The record owner of claims 43B 17157-00, 43B 17158-00, 43B 17159-00, and 43B 19920-00 is 44 Big Sky Farms LLC (44 Big Sky).

2. Claims 43B 17157-00, 43B 17159-00, and 43B 19920-00 were decreed with DNRC issue remarks:

Claim 43B 17157-00:

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED DECREE IS MAY 1, 1901.

Claim 43B 17159-00:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE PUMP AND PIPELINE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Claim 43B 19920-00:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The DNRC did not substantiate why the issue remarks were added to the claims.

3. The United States of America (Bureau of Reclamation) objected to claims 43B 17157-00, 43B 17158-00, 43B 17159-00, and 43B 19920-00.

4. Jon A. Grosfield and Marilyn Grosfield filed Notices of Intent to Appear for claim 43B 19920-00. Jon Grosfield withdrew his Notice of Intent to Appear on January 19, 2023.

5. 44 Big Sky, the Bureau of Reclamation, and Marilyn W. Grosfield filed a Stipulation on May 1, 2023. (Doc.¹ 27.00) The Stipulation resolves the Objections, Marilyn W. Grosfield's Notice of Intent to Appear concern, and the issue remarks.

6. Pursuant to the agreement of the parties, the following maximum acres and place of use changes should be made to claims 43B 17157-00 and 43B 17158-00:

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

Maximum Acres:	480.00	447.50						
Place of Use:								
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1	460.00	183.00	E2	SE	10	1N	14E	SWEET GRASS
2	40.00	32.10	E2SW	NE	10	1N	14E	SWEET GRASS
3	45.00	1.30	N2NW	SW	14	1N	14E	SWEET GRASS
4	245.00	222.00		W2	11	1N	14E	SWEET GRASS
5	20.00	9.10		N2	15	1N	14E	SWEET GRASS
Total:	480.00	447.50						

7. The parties agree the following maximum acres and place of use changes should be made to claim 43B 17159-00:

Maximum Acres:	480.00	345.80					
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	460.00	112.00	E2	SE	10	1N	14E SWEET GRASS
2	40.00	32.10	E2SW	NE	10	1N	14E SWEET GRASS
3	45.00	1.30	N2NW	SW	14	1N	14E SWEET GRASS
4	245.00	191.30		W2	11	1N	14E SWEET GRASS
5	20.00	9.10		N2	15	1N	14E SWEET GRASS
Total:	480.00	345.80					

8. Pursuant to the agreement of the parties, the following flow rate, maximum acres, and place of use changes should be made to claim 43B 19920-00:

Flow Rate:	42.50 CFS	2.98 CFS					
Maximum Acres:	333.50	52.40					
Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.00	17.00	W2SE	SW	10	1N	14E SWEET GRASS
2	37.50	35.00	E2SW	NE	10	1N	14E SWEET GRASS
3	401.00	0.40	NENENW	SE	15	1N	14E SWEET GRASS
4	70.00			NW	11	1N	14E SWEET GRASS
5	120.00			SW	11	1N	14E SWEET GRASS
Total:	333.50	52.40					

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect.

This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564. The DNRC issue remarks decreed on claims in this Case do not overcome the prima facie Statements of Claim.

RECOMMENDATIONS

1. The claims should be modified as shown in the Findings of Facts.
2. The issue remarks should be removed from claims 43B 17157-00, 43B 17159-00, and 43B 19920-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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(Represents Marilyn Grosfield)

Service List Updated: 5/9/2023

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 17157-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: 44 BIG SKY FARMS LLC
101 N HOUSTON AVE
CAMERON, TX 76520 3322

Priority Date: MARCH 14, 1902

Type of Historical Right: DECREED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 13.75 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 447.50

Source Name: BIG TIMBER CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNE	2	1N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: ARNESON DITCH

Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	183.00		E2	10	1N	14E	SWEET GRASS
2	32.10		E2SW	10	1N	14E	SWEET GRASS
3	1.30		N2NW	14	1N	14E	SWEET GRASS
4	222.00		W2	11	1N	14E	SWEET GRASS
5	9.10		N2	15	1N	14E	SWEET GRASS
Total:	447.50						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

17157-00 17158-00 17159-00 19920-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 17158-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: 44 BIG SKY FARMS LLC
101 N HOUSTON AVE
CAMERON, TX 76520 3322

***Priority Date:** MAY 10, 1918

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 13.75 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 447.50

Source Name: BIG TIMBER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNE	2	1N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: ARNESON DITCH

Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	183.00		E2	10	1N	14E	SWEET GRASS
2	32.10		E2SW	10	1N	14E	SWEET GRASS
3	1.30		N2NW	14	1N	14E	SWEET GRASS
4	222.00		W2	11	1N	14E	SWEET GRASS
5	9.10		N2	15	1N	14E	SWEET GRASS
Total:	447.50						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

17157-00 17158-00 17159-00 19920-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 17159-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 44 BIG SKY FARMS LLC
101 N HOUSTON AVE
CAMERON, TX 76520 3322

Priority Date: JULY 15, 1962

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 12.50 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 345.80

Source Name: YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	10	1N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: PUMP

Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	112.00		E2	10	1N	14E	SWEET GRASS
2	32.10		E2SW	10	1N	14E	SWEET GRASS
3	1.30		N2NW	14	1N	14E	SWEET GRASS
4	191.30		W2	11	1N	14E	SWEET GRASS
5	9.10		N2	15	1N	14E	SWEET GRASS
Total:	345.80						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

17157-00 17158-00 17159-00 19920-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 19920-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 44 BIG SKY FARMS LLC
101 N HOUSTON AVE
CAMERON, TX 76520 3322

Priority Date: MARCH 18, 1881

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.98 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 52.40

Source Name: WHITETAIL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSE	10	1N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	17.00		W2SE	10	1N	14E	SWEET GRASS
2	35.00		E2SW	10	1N	14E	SWEET GRASS
3	0.40		NENENW	15	1N	14E	SWEET GRASS

Total: 52.40

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

17157-00

17158-00

17159-00

19920-00